

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 5. This sheet, which includes Fig. 1-11, replaces the original sheet including Fig. 1-11. In Figure 5, reference numeral 40 as found in the previous Fig. 5, has been changed to 140. This change is in agreement with the reference to the queue as found in paragraph [0041] of the specification.

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REMARKS

Applicant has carefully studied the non-final Examiner's Office Action mailed August 09, 2005. The amendments appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Office Action by headings that correspond to the headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Claims 1, 3-6, 12-21, 23 and 30-35 remain in this application, along with new claims 37-45. Claims 2, 7-11, 22, 24-29 and 36 are herein canceled. Claim 1 has been amended to include the limitations of claim 2. Claims 3-5 have been amended to correct their dependency. Claim 15 has been amended. Support for the amendments to claim 15 can be found in original claims 24 through 27, which are herein cancelled and in the specification. Claim 33 has been amended. Support for the amendment can be found in original claims 10 and 24-27 and in the specification. New claims 37 and 41. Support for the amendment can be found in claims 10 and 11, respectively, as well as claim 1, thereby presenting claims 37 and 41 as independent claims. Claims 38-40 and 42-44 recite the limitations of canceled claims 7-9. Support for new claim 45 can be found in original claims 10, 15 and 32-36. No new matter has been added by the amendments.

Specification

1. The abstract was objected to because it should avoid using phrase that can be implied, such as, "invention" on line 1. The abstract has been amended to remove informalities and legal terminologies such as "means". It is respectfully requested that the Examiner withdraw the objection to the specification in light of Applicant's amendment.

2. Claims 24 and 32 were objected to because allegedly an incorrect verb tense was used (i.e. the Office instructed the Applicant to "replace --broadcasted-- with broadcast"

to correct verb tense). As to claim 24 this objection is rendered moot by Applicant's cancellation of the claim. As to claim 32 Applicant seeks clarification of the instruction as the claim does not recite the word "broadcasted", leaving nothing to be replaced with the word "broadcast". Please clarify this objection.

Drawings

3. The drawings were objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "40" was used to designate both Channel ID (Fig. 1) and Queue (Fig.5). Reference character "40" as found in Fig. 5 has been amended to "140" in agreement with paragraph [0041] of the specification. It is respectfully requested that the Examiner withdraw the objection to the drawings in light of Applicant's amendment.

Double Patenting

4. Claim 22 was objected to under 37 CFR 1.75 as being a substantial duplicate of claim 21. Claim 22 is canceled herein. It is respectfully requested that the Examiner withdraw the objection in light of Applicant's cancellation of claim 22.

Claim Rejections - 35 U.S.C. §112, second paragraph

5. Claim 25 has been objected to under 35 USC §112, second paragraph. The Office has argued, "[T]he word 'means' is preceded by the word(s) 'delivery' in an attempt to use a 'means' clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding 'means,' it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967)."

This rejection is rendered moot by Applicant's cancellation of the claim.

Claim Rejection(s) – 35 U.S.C. §102

6. The Office has rejected claims 1-2, 5-9, 12-13, 15-19, 24-29 and 33-36 under 35 USC §102(a) as allegedly anticipated by Noreen et al. (U.S. Publication No. 2002.0183059). The Applicant respectfully traverses this rejection on the grounds that the claims are not anticipated by Noreen et al.

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It is well-settled that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration"^{1,2} Furthermore, to find anticipation the identical invention must be shown in as complete detail as is contained in the claim with the elements arranged as required by the claim.³

Claim 1, as amended, is directed to "[a] method of distributing audio content transmitted over radio comprising the steps of: assigning a user identification value to a subscriber; storing contact information on the subscriber linked to the user identification value; assigning a channel identification value to a radio station channel; assigning an audio content value to an audio recording played over the radio transmission; generating a play database storing the time at which each audio recording was played on each radio station; receiving a signal having a user identification value and a channel identification value; cross-referencing the play database for the audio content value of the audio recording played on the radio station at the time the signal was received; and transmitting data associated with the audio content value to the subscriber according to the stored contact information, wherein the data associated with the audio content value is a digital audio file of the audio recording played over the radio transmission." Thus, a step in the instant method of claim 1 requires transmitting data associated with the audio content value to the subscriber according to the stored contact information. The data associated with the audio content value that is transmitted is a digital audio file of the audio recording played over the radio transmission. Thus, for instance, if the particular audio recording were a song, the subscriber would receive a digital audio file of the song, not merely information about the song.

¹ W.L. Gore and Assoc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing Soundsciber Corp. v. United States, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)), *cert. denied*, 469 U.S. 851 (1984); See also Carella v. Starlight Archery, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir.), modified on reh'g., 1 USPQ 2d 1209 (Fed. Cir. 1986). RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

² See also MPEP 2131 providing "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsisimilis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

³ *Id.*

Claim 1 includes the limitations of previously pending claim 2. On page 5 of the instant action the Office asserts "[r]egarding claim 2, Noreen et al. teach the limitation of claim 1. Noreen et al. further teach the limitation of having data associated with the audio content value in digital format (paragraph 59 lines 8-12), where digital content distribution is indicated." The Office has mischaracterized the language of the claim and further mischaracterized the teachings of Noreen et al. The identified lines (paragraph 59 lines 8-12) of Noreen state as follows, "[i]f implemented in connection with broadcasters broadcasting digital radio signals, the digital radio signals are preferably encoded with signals identifying the broadcaster and the specific program segment being transmitted." Clearly this is not a digital audio file of the audio recording played over the radio transmission, nor does the excerpted passage fairly suggest such a system. It is noted that at paragraph 0055, lines 2-10 Noreen et al. provides,

As can be seen, information pertaining to various songs selected by the subscriber are provided including the title of the song, the name of the performer of the song, the radio station broadcasting the song and the date and time of day of the broadcast. Additionally, the web page *provides a hyperlink* to permit the subscriber to immediately download a digital version *of a portion of the song for verifying* that the song identified in the list was indeed the song listened to by the subscriber. Additionally, the web page provides links to e-commerce sites permitting the subscriber to purchase the CD in which the song appears or perhaps to create a customized CD containing the song or a customized digital music file. (emphasis added)

Noreen does not teach a system whereby the customer/subscriber is sent a digital audio file of the audio recording played over the radio transmission. More specifically, the data associated with the audio content value that is transmitted in Noreen is not *a digital audio file of the audio recording* played over the radio transmission. The subscriber either receives a hard copy of the audio recording by making a purchase of a CD via a purchase request or he must take additional steps to download the digital version himself by going to another website, producing purchase orders etc. The hyperlink referred to above only provides a link to a site and that site only enables the user to listen to a portion of the song for the purpose of verification of identity. Claim 22 of Noreen makes a cryptic reference to a means for fulfilling the purchase order includes a means for generating a digital musical file containing the music specified by the purchase order and a means for transmitting the digital music file via the internet to the subscriber. Unfortunately, the specification does not explain what is meant by this puzzling reference, and it is well-settled that such means-plus-function clauses require the

elaboration of embodiments in the specification to determine the scope and meaning of what is referred to in the claim. In the present case, at best it refers to a process requiring numerous steps where the user would be sent to an external site via a hyperlink and then have to make a purchase order as described in paragraph 0055, lines 2-10. Claims 5-6 and 12-13 are dependent on claim 1 and therefore allowable as a matter of law.

Similarly, claim 15, as amended by including the limitations of claims 24-27, recites the limitation including that the subscriber receive in response to the signal a digital audio file of the digital content. Noreen et al. does not teach a system, nor does Noreen fairly suggest the system of claim 15. Claims 16-19 are dependent on claim 15 and therefore allowable as a matter of law.

Claim 33 has been amended to recite the limitation that the play database is generated subsequent to the broadcast of the associated audio recordings and the received signals are stored in a queue. Noreen et al. does not teach or suggest such a method, such methodology is discussed further below in reference to Walsh et al. Claims 34-35 are dependent on claim 33 and therefore allowable as a matter of law.

Claims 2, 7-9, 24-29 and 36 have been canceled rendering moot their rejection. For the reasons outlined above it is respectfully requested that the rejection of claims 1, 5-6, 12-13, 15-19 and 33-35 under 35 U.S.C. § 102(a) be withdrawn.

Claim Rejection(s) – 35 U.S.C. 103

7. The Office has rejected claims 3 and 30 under 35 USC §103 as allegedly being unpatentable over Noreen et al. in view of Levy et al. (U.S. Patent No. 6,505,160). Applicant respectfully traverses this rejection.

Claims 3 and 30 are dependent upon claim 1 and 15, respectively. It is asserted that claims 1 and 15 are novel and nonobvious for reason of record. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). It is therefore asserted that claims 3 and 30 are nonobvious and are therefore allowable as a matter of law. It is therefore respectfully requested that the rejection of claims 3 and 30 under 35 U.S.C. § 103(a) be withdrawn.

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8. The Office has rejected claims 4, 10-11, 14 and 31-32 under 35 USC §103 as allegedly being unpatentable over Noreen et al. in view of Walsh et al. (U.S. Pub. No. 2003/0050058). Applicant respectfully traverses this rejection.

The Office states that Noreen et al. discloses a method of distributing audio content transmitted over radio comprising the steps of assigning a user identification value to a subscriber, storing contact information on the subscriber linked to the user identification value, assigning a channel identification value to a radio station channel, assigning an audio content value to an audio recording played over the radio transmission, generating a play database storing the time at which each audio recording was played on each radio station, receiving a signal having a user identification value and a channel identification value, cross-referencing the play database for the audio content value of the audio recording played on the radio station at the time the signal was received, and transmitting data associated with the audio content value to the subscriber according to the stored contact information with reference to various sections of the Noreen disclosure. The Office further indicates that the data associated with the audio content value is a digital audio file of the audio recording played over the radio transmission with reference to paragraph 0059, lines 8-12.

The Office additionally states that claims 4, 14, 37 (canceled claim 10) and 41 (canceled claim 11) of the present invention differs only by reciting the limitation of (1) of processing the digital audio file with DRM prior to distribution (claims 4 and 14), (2) generating play database prior to broadcast of the associated audio recordings that is performed in real time (claim 37), or (3) generating play database subsequent to broadcast of the associated audio recordings where the received signals are stored in a queue (claim 41), but that the reference to Walsh et al. discloses that it is known in the art to include these elements when distributing audio content transmitted over radio. As such, the Office contends that in view of the teaching by Walsh et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate copyright protection or play-database generating methods taught by Walsh et al. into the operation of audio distribution method taught by Noreen, for the purpose of providing copyright protection on distributed digital content or creating convenient customizable play-database. Thus, presumably, the motivation for the limitation of

processing the digital audio file with DRM prior to transmitting would be for the purpose of providing copyright protection. Presumably, the motivation for the limitation of generating the play database prior to broadcast of the associated audio recordings that is performed in real time, or generating play database subsequent to the broadcast of the associated audio recordings where the received signals are stored in a queue, would be for creating convenient customizable play-database, a motivation allegedly supplied by Walsh et al.

It is asserted that the Office has not made a *prima facie* case of obviousness, nor is the present invention rendered obvious by the relied upon references. To support a rejection under 35 USC §103(a) a *prima facie* case of obviousness must be made. MPEP §2143 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Thus, the Office has the burden of explaining why the prior art presented would appear to show the claimed subject matter and not simply the general aspects of the invention. In making the *prima facie* case "the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references."⁴ *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Finally, while the first prong of the analysis, addressing the motivation to combine the prior art indicates instructs that the suggestion or motivation to make the combination can come from the references themselves or from the knowledge generally available to one of ordinary skill in the art, the third prong requires that each of the limitations in the claim must be found in, or suggested by, the prior art relied upon in making the rejection with specificity as to where these limitations can be found. In other words, "all the claim limitations must be taught or suggested by the prior art."⁵

⁴ See MPEP 2143 citing *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

⁵ MPEP 2143.03

A. Expectation of Success Not Addressed

As a preliminary matter, it is noted that in making a *prima facie* case of obviousness, the Office, in the second prong of the test, must address the issue of the reasonable expectation of success in making the claimed combination. In so doing, the Office must show that one of ordinary skill in the art would be capable of producing the claimed combination. This would require at least a statement as to why the aforementioned references could be combined and the expected functionality of the asserted combination, especially the aspects of functionality bridging the gaps between the references. It is asserted that, based upon the presumed motivations as listed above, the Office could not arrive at a system with the expected functionality due to unaddressed gaps in the cited references. These gaps are addressed more fully below. The instant Office Action is completely silent on the issue of expectation of success.

B. No Suggestion or Motivation to Combine References

The first of the three prongs required in making a *prima facie* case of obviousness require some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The three possible sources for motivation to combine references are (1) the nature of the problem to be solved, (2) the teachings of the prior art, and (3) the knowledge of those of ordinary skill in the art. Additionally, it is well-settled that "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."⁶ Furthermore, the proposed modification cannot change the principle of operation of a reference.⁷

i. No suggestion in the prior art

Clearly, neither Noreen et al. nor Walsh et al. teach or suggest making the modifications that would be necessary to arrive at the present invention. Thus, the teachings of the prior art do not provide the motivations to combine.

⁶ See MPEP 2143.01 Section V citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

⁷ See MPEP 2143.01 Section VI - If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)

Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious *unless the prior art also suggests the desirability of the combination*. In *re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (emphasis added) See MPEP 2143.01 Section III. The Office has not shown that the prior art suggests the desirability of the combination.

ii. The nature of the problem does not provide the necessary motivation

Furthermore, the nature of the problem to be solved was far different in Walsh et al than that of Noreen et al. Walsh was concerned with requesting a song or other audio content to be played at a future date based upon a user inputting the title of a song into a system. Noreen was concerned about requesting information about the identity or other information of a song that he was hearing or had recently so he could acquire that song. In Walsh the user was creating the play database, while in Noreen the user was requesting information about past events in the database.

iii. The knowledge of those of ordinary skill in the art does not provide the motivation

In rejecting claims 10 and 11 the Office has asserted that the motivation for combining the Noreen and Walsh references to arrive at the present invention can be found desire for creating convenient customizable play-database. It is first noted that the play-database as taught in *both* Noreen and the instant application is in no way customizable. The subscriber in both instances is merely listening to the songs that the radio station broadcasts. The subscribers have absolutely no control over the population of the database. The subscribers request information such as the title or some mechanism for acquiring a copy of the song for future personal use. This, in fact, is one of the key differences between the systems of Noreen and the instant application from that of Walsh, where the entire foundation of the system relies on enabling the user to populate at least a portion of the database. This was addressed above when discussing the nature of the problem to be solved, which was far different in Walsh from that in the other two cases. At paragraph 0007 of the instant application it was pointed out that music listening can be divided into one of two categories: (1) acquisition of new favorites and (2) enjoyment of existing favorites. In Walsh, the inventor was concerned about enjoyment of existing favorites. A user of the Walsh system makes a selection, or sends

a signal, to affect the population of the database. That database can be affected by additional issues such as the number of requests for a particular song. Importantly, the signal sent by the subscriber or other user affects the content of the play database. That signal or request causes the song to enter the queue. It then waits its turn to be played. In stark contrast to Walsh, Noreen and the instant application are concerned with the acquisition of new favorites. The user of these systems know little or nothing about the identity of the song they just heard. In fact, that is one of the fundamental reasons for making the request. In these systems, the user is requesting to acquire some aspect of a song they just heard or are hearing. They know nothing of the name of the song or other content. In Walsh the user is hoping that a favorite will soon be played. To utilize the Walsh system the user must know information about the song such as the title. The queue spoken of in the present application is concerned with matching signals to the identity of the song. It is the signal, with the subscriber id, channel id and timestamp that enters the queue. The database must then be updated as the channel releases information retrospectively about their broadcast. The problem of matching is dealt with extensively in the present application and is addressed in Noreen as well. (See paragraph 0053 of Noreen et al.) The present application teaches novel ways of solving this problem, methods that are not taught or suggested in any way by the Noreen reference. It would appear that the Office saw the word "queue" in claim 11, a word also found in the Walsh reference, and looked no further at the remainder of the elements or limitations found in the claim.

In rejecting claims 4, 14, 31 and 32 the Office states the motivation for the limitation of processing the digital audio file with DRM prior to transmitting would be for the purpose of providing copyright protection on distributed digital content. Again, this motivation does not make sense. A copyright, and copyright protection under the law, is secured automatically when the work is created by the author of the work. The work is created when it is fixed in a copy or phonorecord for the first time by or under the authority of the author. (See U.S. Code Title 17 Copyrights at 17 U.S.C. §302 regarding duration of copyrights) For example, recording a speech on magnetic tape would be fixation of the work on the date of the recording. Writing the final text of a magazine article into a computer memory would also be considered to be a fixation of

that article at that time. Thus, in music a song can be protected by two copyrights. The artist that wrote the song secured copyright protection when the song was written out. Additionally, the artist who performed the song also receives copyright protection on their particular performance of a song when that song performance is recorded. Therefore, providing copyright protection on distributed digital content simply is not a plausible motivation as the work already has copyright protection from the point at which the artist wrote and/or recorded the song.

iv. The Proposed Modification Would Render the Prior Art Unsatisfactory for Its Intended Purpose

MPEP 2143.01 Section V provides, “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Claim 11, now 41, specifically states “the play database is generated subsequent to the broadcast of the associated audio recordings...” It does not make sense that the database in Walsh is generated after the song has been played. If the user’s request has been fulfilled by hearing the song, then why would the system need to make a database of the requests after that time? If this modification were made, then the Walsh system would no longer work.

As to claim 10 it is stated that “the play database is generated prior to the broadcast of the associated audio recording and the transmission of data associated with the audio content value is substantially performed in real time.” Thus, the transmission of the data would occur essentially immediately responsive to the signal sent from the user/subscriber. By generating the database before the broadcast the system removes the delay associated with waiting for the database to be updated by the radio station as the songs are broadcast. Thus, the database would already be fixed and known prior to broadcast (at least by the system, though not by the user). Again, in reference to Walsh, there would be no value in having the database if the user/subscriber’s signal will be fulfilled in real time. As soon as the signal were sent by the user the song would be played. So why populate the database after the song is played? Also, the Walsh system would not work very well if each new signal pre-empted the immediately preceding

signal. If that were the case, each new request would cause the song to play, pre-empting the song already playing. That certainly would not make for a very satisfactory jukebox.

v. The Proposed Modification Would Change the Principle of Operation of the Walsh Reference

MPEP 2143.01 Section V provides, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)" It was pointed out above when addressing the nature of the invention that the present invention and Noreen differed dramatically in their nature of the problem to be solved from that of Walsh et al. In Walsh the user is entering a known song title and waiting for the song to be played in the future. This is its principle of operation. In Noreen and the present invention the user is acting upon past events. Clearly, the principles of operation and the underlying methodologies to affect these systems are very different. In Walsh the user is directly affecting the population of the database prospectively. In Noreen and the instant application the user is looking retrospectively at a database where he has no control.

C. The Prior Art References Do Not Teach or Suggest All of the Claim Limitations

A *prima facie* case of obviousness cannot be made case because the prior art does not teach or suggest all of the claim limitations. MPEP 2143 provides:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

As to claim 4, both Noreen et al. and Walsh et al., as well as the references when combined, fail to teach or suggest the limitation of the step of transmitting data associated with the audio content value to the subscriber according to the stored contact information, wherein the data associated with the audio content value is a digital audio file of the audio recording played over the radio transmission with processing the digital audio file with DRM prior to transmitting the digital audio file to a subscriber. The

references are similarly deficient with respect to claim 14. Many of these deficiencies were addressed with respect to the rejection of claims under 35 USC §102.

Likewise, the references fail to teach or suggest the limitations as found in original claims 10 and 11 (now 37 and 41, respectively). For instance, in original claim 11 it appears that the Office saw the word "queue" in the claim and looked no further. As to claim 10 it does not appear that the Office considered the limitation of the transmission of data associated with the audio content is performed in real time and how such a limitation could not be satisfied in the context of Walsh et al.

In conclusion, it would not have been obvious to one of ordinary skill in the art at the time the invention was made to employ the systems of Noreen and Walsh to arrive at the present system. For the reasons cited above, Applicant believes that independent claims 4, 10 (now 37), 11 (now 41), 14 and 31-32 are patentable over Noreen in view of Walsh and are believed to be in condition for allowance.

9. The Office has rejected claims 20-22 under 35 USC §103 as allegedly being unpatentable over Noreen et al. in view of Richter. (U.S. Pub. No. 2002/0155815). Applicant respectfully traverses this rejection.

Claims 20-22 are dependent upon claim 15. It is asserted that claim 15 is novel and nonobvious for reasons of record. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). It is therefore asserted that claims 20-22 are nonobvious and are therefore allowable as a matter of law. It is further asserted that the Office has not made out a *prima facie* case as they have not addressed the reasonable expectation of success in regard to the claimed combination, leaving Applicant with no meaningful opportunity to respond thereto. It is therefore respectfully requested that the rejection of claims 20-22 under 35 U.S.C. § 103(a) be withdrawn.

10. The Office has rejected claims 23 under 35 USC §103 as allegedly being unpatentable over Noreen et al. in view of Martin (U.S. Pat. No. 4,528,696). Applicant respectfully traverses this rejection.

Claims 23 is dependent upon claim 15. It is asserted that claim 15 is novel and nonobvious for reasons of record. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). It is therefore asserted that claims 23 is nonobvious and is therefore allowable as a matter of law. It is further asserted that the Office has not made out a *prima facie* case as they have not addressed the reasonable expectation of success in regard to the claimed combination, leaving Applicant with no meaningful opportunity to respond thereto. It is therefore respectfully requested that the rejection of claims 23 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

Entry of a Notice of Allowance is solicited. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

By: 

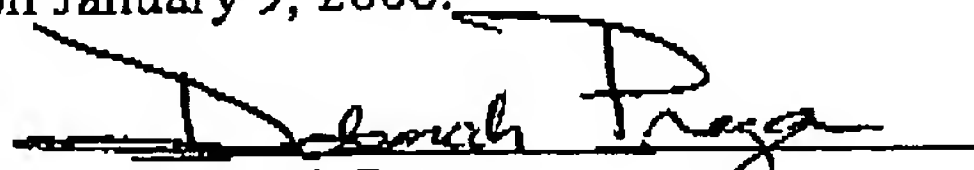
Michael M. McGaw
USPTO Reg. No. 53,296
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: January 9, 2006

CERTIFICATE OF FACSIMILE TRANSMISSION (37 C.F.R.1.8(a))

I HEREBY CERTIFY that this Amendment A, including Amendments to the Specification, Amendments to the Drawings, Amendments to the Claims and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 2682, Attn: Zhiyu Lu, (571) 273-8300, on January 9, 2006.

Date: January 9, 2006


Deborah Preza